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9

Attorneys for Defendant, United States Department of Education

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**
12

13 In re

14 AUDREY HARP MONTALBAN,
15 Debtor.

16 AUDREY HARP MONTALBAN,

17 Plaintiff,

18 vs.

19 UNITED STATES DEPARTMENT OF
EDUCATION, *et al.*,

20 Defendants.
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23
24
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Case No. 2:21-bk-10378-BR

Chapter 7

Adv. No. 2:21-ap-01059-BR

**STIPULATION FOR ENTRY OF
JUDGMENT**

[Filed Concurrently with Judgment]

Pre-Trial Conference:

Date: March 29, 2022

Time: 10:00 a.m.

Place: Courtroom 1668

255 E. Temple St.

Los Angeles, CA 90012
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IT IS HEREBY STIPULATED by and between Plaintiff Audrey Harp Montalban (“Plaintiff”), and Defendant United States Department of Education (“Defendant”) (collectively, the “Parties”), through their respective counsel of record:

RECITALS

A. On or about April 7, 2021, Plaintiff filed a first amended complaint to determine dischargeability of student loans pursuant to 11 U.S.C. § 523(a)(8) (Docket No. 4) (“Complaint”), commencing the subject adversary proceeding (“Adversary Proceeding”).

B. Defendant timely filed an Answer to the Complaint.

C. Pre-petition, on or about May 2, 2006, Plaintiff executed a Federal Stafford Loan Master Promissory Note (“Note”) to obtain a Federal Stafford Loan through the Federal Family Education Loan Program (“Student Loan”) from Defendant. Between August 19, 2008 and September 2, 2008, Defendant disbursed proceeds of the Student Loan obtained pursuant to the Note on Plaintiff’s behalf in the principal amount of \$35.52, at an interest rate of 6.80% per annum. Additionally, between May 15, 2008 and January 2, 2009, Defendant disbursed proceeds of the Student Loan obtained pursuant to the Note on Plaintiff’s behalf in the principal amounts of \$8,500.00 and \$12,000.00, at an interest rate of 6.80% per annum.

D. The Student Loan constitutes a student loan made to Plaintiff under a program funded in whole or in part by a governmental unit within the meaning of 11 U.S.C. § 523(a)(8). The program, referred to as the Federal Family Educational Loan Program (“FFELP”) and formerly known as the Guaranteed Student Loan Program, is authorized under Title IV-B of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1071 *et seq.* (34 C.F.R. Part 682).

E. Defendant currently holds all right, title and interest in the Note and the Student Loan.

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1 F. The unpaid balance of the Student Loan, including principal and interest is
2 \$35,202.39 as of February 25, 2022. Beginning on or about March 13, 2020 and through at least
3 May 1, 2022, as a result of the CARES Act and subsequent extensions of emergency relief,
4 Federal Student Aid, an Office of the U.S. Department of Education, has provided temporary
5 relief measures on Department of Education-owned federal student loans, including suspension
6 of loan payments, stopped collections on defaulted loans, and a 0% interest rate.

7 G. Plaintiff is a 53-year-old individual who is single and is currently employed part-
8 time.

9 H. Plaintiff alleges that repayment of the Student Loan would cause an undue
10 hardship pursuant to 11 U.S.C. § 523(a)(8).

11 I. In order to resolve this matter without the need for further litigation, the Parties
12 agree that Plaintiff should receive a partial discharge of the Student Loan and a reduction of the
13 applicable payment term. The Parties further agree that resolution of the Adversary Proceeding
14 with the entry of a judgment reflecting these terms is appropriate under the circumstances set
15 forth below.

16 **STIPULATION**

17 1. The Recitals set forth above are hereby incorporated into the Stipulation by this
18 reference.

19 2. The Student Loan shall be discharged in the amount of \$28,161.60 (\$22,367.96 of
20 principal and \$5,793.64 of interest), resulting in a partial discharge of Plaintiff's Student Loan
21 obligation of \$35,202.39. Plaintiff shall satisfy the remaining Student Loan principal balance of
22 \$7,040.79 ("Reduced Loan Amount") through enrollment in and satisfaction of the terms and
23 conditions of the Alternative Repayment Plan. The Reduced Loan Amount shall be deemed
24 nondischargeable unless and until Plaintiff fully performs all of the obligations required under the
25 Stipulation.

26 3. Pursuant to applicable U.S. Department of Education regulations governing the
27 Alternative Repayment Plan (34 C.F.R. § 685.208(l)), Plaintiff shall commence monthly payments
28 on May 1, 2022 which shall be calculated under the applicable regulations governing the Income-

1 Based Repayment Plan. The Alternative Repayment Plan payments shall be recalculated annually
2 by Plaintiff's Student Loan servicer based upon her most recent year's adjusted gross income or
3 alternatively documented income. Plaintiff shall provide financial information to her Student Loan
4 servicer upon the annual anniversary of the commencement of payments for each year that
5 payments are due pursuant to this Stipulation.

6 4. The repayment period of the Reduced Loan Amount shall be a maximum of ninety-
7 six (96) qualified monthly payments ("Payment Term"). Upon Plaintiff's compliance with and full
8 satisfaction of the terms of this Stipulation, any remaining balance of Plaintiff's Student Loan shall
9 be deemed discharged in bankruptcy, pursuant to the Order of Discharge (Docket No. 14) entered
10 May 3, 2021, and pursuant to 11 U.S.C. § 727.

11 5. The failure of Defendant or its contracted Student Loan servicer to provide monthly
12 reminder notices or receipts for payment shall not relieve Plaintiff of her obligation and agreement
13 to make consecutive, timely, monthly payments, as applicable, under this Stipulation.

14 6. Plaintiff's failure to comply with the terms of this Stipulation shall result in the
15 resumption of the original terms of the Note as if the Complaint had not been filed and the Parties
16 had not entered into this Stipulation. Breach of the terms and conditions of the Stipulation shall
17 include, but is not limited to, Plaintiff's failure to make any payment due hereunder within thirty
18 (30) days of the due date without securing Defendant's written agreement to forbearance of such
19 payment(s). If Plaintiff fails to meet her obligation to make payments discussed above, any
20 forgiveness/discharge of the principal and interest is revoked, and all of the original terms of the
21 Note shall again be in effect, and Plaintiff shall be liable for the full amount of the outstanding
22 balance, plus interest, pursuant to the applicable terms of the Note.

23 7. Payments to be made pursuant to this Stipulation shall be sent to Defendant via its
24 contracted loan servicer assigned to handle the Student Loan. Any and all payments may be made
25 by mail, telephone, online, or any other payment option offered by Defendant's contracted servicer
26 of the Student Loan. Currently, Plaintiff's Student Loan is serviced by Aidvantage Servicing, with
27 the following payment address: U.S. Department of Education, Aidvantage Servicing, P.O. Box
28 4450, Portland, Oregon 97208-4450. Each payment shall reference Plaintiff's account number or

1 Social Security Number. If, in the future, the contracted loan servicer or payment address changes,
2 Plaintiff shall be notified by mail and must adjust the payment method accordingly.

3 8. Nothing in this Stipulation is intended to nor does it preclude Plaintiff from applying
4 for total and permanent disability discharge, economic hardship, forbearance, deferment, or any
5 other repayment program currently offered, or which may be offered in the future, by the Defendant
6 to student loan borrowers, for which Plaintiff may qualify. Plaintiff may contact Defendant for
7 consideration of that relief with respect to any remaining balance of the Student Loan.

8 9. There is no penalty for prepayment under the Stipulation, but any prepayment,
9 unless it is a payment in full, does not relieve the Plaintiff of the obligation to make ongoing
10 monthly payments. Student Loan consolidation, however, is not considered prepayment. Therefore,
11 if Plaintiff consolidates the Note, the amount certified will be the amount due under the original
12 terms of the Note, including any charges or fees allowed by federal regulations, and this Stipulation
13 shall become null and void.

14 10. In the event that Plaintiff fails to make any timely monthly payments when due or
15 breaches the Stipulation, Plaintiff shall be in default of this Stipulation. As a result, interest at the
16 statutory rate as provided by 28 U.S.C. § 1961 shall be due and owing and subject to collection
17 from the date of the Order on the Stipulation. Defendant and/or the United States may and shall be
18 entitled to enforce and collect the full amount of the Student Loan in the amount of \$35,202.39,
19 pursuant to the Federal Debt Collection Procedures Act and any other federal or state law, and
20 Defendant and/or the United States may use any and all means of collection, including but not
21 limited to wage garnishment, offsets of federal tax refunds and any other federal payments and
22 benefits due to Plaintiff, and execution of the accompanying Judgment against any real or personal
23 property owned by Plaintiff, to which Plaintiff hereby consents.

24 11. The terms of this Stipulation shall survive and be effective in any future bankruptcy
25 filing under any chapter of the United States Bankruptcy Code by Plaintiff.

26 12. If any one or more terms or provisions of this Stipulation is/are held to be
27 unenforceable, the remaining terms and provisions shall remain in full force and effect and shall be
28 construed as if the unenforceable provisions had never been contained in this Stipulation.

1 13. Any and all individual taxation consequences as a result of this Stipulation are the
2 sole and exclusive responsibility of Plaintiff. Defendant does not warrant any representation of any
3 tax consequences of this Stipulation. Nothing contained herein shall constitute a waiver by
4 Plaintiff of any right to challenge any tax consequences of this Stipulation and/or any cancellation
5 of debt resulting from forgiveness of any balance due on the Student Loan.

6 14. Any amendment, modification, or waiver of any term or condition of this
7 Stipulation must be made in writing and signed by all Parties hereto. Any attempted oral or
8 implied amendment, modification or waiver shall be null and void.

9 15. Defendant, on the one hand, and Plaintiff on the other hand, for themselves and for
10 their respective officers, shareholders, directors, general partners, limited partners, agents,
11 employees, predecessors, heirs, successors, attorneys, assigns, insurers, parent corporations,
12 subsidiary corporations and affiliated companies, do hereby mutually release and forever
13 discharge each other, and all of their respective officers, shareholders, directors, general partners,
14 limited partners, agents, employees, predecessors, successors, attorneys, assigns, insurers, parent
15 corporations, subsidiary corporations and affiliated companies of and from any and all claims,
16 acts or omissions relating to the Note and the Student Loan, solely by and between Plaintiff and
17 Defendant, and not for the United States or any other federal agency(ies), to the date that
18 Judgment is entered on this Stipulation.

19 16. Plaintiff and Defendant, and each of them, acknowledge that they have been
20 informed of the provisions of Section 1542 of the Civil Code of the State of California, and do
21 hereby expressly waive and relinquish all rights and benefits which they have or may have under
22 that section or any similar provision of law in another jurisdiction that may be applicable.
23 California Civil Code Section 1542 reads as follows:

24 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST
26 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND
27 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
28 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

17 17. Plaintiff and Defendant, and each of them, understand and acknowledge the
28 significance and consequence of such waiver of Section 1542 of the California Civil Code and

1 intend that this Release be interpreted pursuant to California law which shall apply to the waiver
2 set forth in this section. In the event that such choice of law provision should not be given effect
3 for any reason, Plaintiff and Defendant further specifically waive any right or benefit available in
4 any capacity under any similar provision of law in any other state. Plaintiff and Defendant do
5 release those claims described herein, known or unknown, which they may have now against the
6 other, and further elect and do assume all responsibility for those claims described herein, known
7 or unknown, that they may have now against the other.

8 18. Except as provided in this Stipulation, all other terms of the Note remain in effect
9 and are hereby incorporated by reference. To the extent that the terms of the Note conflict with
10 the terms of this Stipulation, the terms in this Stipulation control.

11 19. The Parties to this Stipulation acknowledge that they have been represented by
12 independent counsel of their own choice or have had independent counsel available to them
13 throughout all of the negotiations that have preceded the execution of this Stipulation. Plaintiff
14 represents and acknowledges that she enters into this Stipulation freely and voluntarily. Plaintiff
15 further acknowledges that she had sufficient opportunity to consult with an attorney regarding the
16 terms and conditions of this Stipulation.

17 20. This Stipulation and any attachments that are incorporated herein constitute the
18 entire agreement of the Parties.

19 21. Each person signing this Stipulation warrants that he/she is fully authorized to sign
20 this Stipulation on his/her behalf and on behalf of his/her respective predecessors, transferors
21 and/or assignors and that the Stipulation is therefore, binding upon and enforceable against the
22 same.

23 22. This Stipulation is binding upon and shall inure to the benefit of the Parties hereto,
24 their respective heirs, executors, administrators, predecessors, successors and assigns.

25 23. Each party hereto agrees to bear his/her own costs, expenses and attorney's fees in
26 connection with the aforementioned lawsuit and claims.

27 24. All notices sent to Plaintiff pursuant to this Stipulation shall be sent by U.S. Mail,
28 postage paid:

Audrey Harp Montalban
1006 S. Orange Drive, Apt. 102
Los Angeles, CA 90019

25. Plaintiff shall use the following contact information for all contact with Defendant related to this Stipulation:

U.S. Department of Education
Attention: Cristin Bulman
Litigation Unit
Federal Student Aid
50 United Nations Plaza
Mail Box 1200, Room 1240
San Francisco, CA 94102

26. The Parties to this Stipulation certify that they have read and fully understand its terms.

Dated: March 9, 2022

By: See Next Page
AUDREY HARP MONTALBAN

Dated: March 9, 2022

TRACY L. WILKISON
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

By: /s/ Elan S. Levey
ELAN S. LEVEY
Assistant United States Attorney

Attorneys for Defendant,
U. S. Department of Education

APPROVED AS TO FORM AND CONTENT:

Dated: March 9, 2022

RHM LAW LLP

By: See Next Page
PARDIS AKHAVAN
Attorneys for Plaintiff, Audrey Harp Montalban

Audrey Harp Montalban
1006 S. Orange Drive, Apt. 102
Los Angeles, CA 90019

25. Plaintiff shall use the following contact information for all contact with Defendant related to this Stipulation:

U.S. Department of Education
Attention: Cristin Bulman
Litigation Unit
Federal Student Aid
50 United Nations Plaza
Mail Box 1200, Room 1240
San Francisco, CA 94102

26. The Parties to this Stipulation certify that they have read and fully understand its terms.

Dated: March 9, 2022

By: 
AUDREY HARP MONTALBAN

Dated: March 9, 2022

TRACY L. WILKISON
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

By: /s/ Elan S. Levey
ELAN S. LEVEY
Assistant United States Attorney

Attorneys for Defendant,
U. S. Department of Education

APPROVED AS TO FORM AND CONTENT:

Dated: March 9, 2022

RHM LAW LLP

By: 
PARDIS AKHAVAN
Attorneys for Plaintiff, Audrey Harp Montalban

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
United States Attorney's Office, 300 N. Los Angeles Street, Room 7516, Los Angeles, California 90012

A true and correct copy of the foregoing document entitled **STIPULATION FOR ENTRY OF JUDGMENT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **March 15, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Elan S Levey** elan.levey@usdoj.gov, julie.morales@usdoj.gov
- **Scott A Schiff** sas@soukup-schiff.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov
- **Timothy Yoo (TR)** tjytrustee@lnbyg.com, tjy@trustesolutions.net
- **M. Jonathan Hayes** jhayes@rhmfir.com, roksana@rhmfir.com; matt@rhmfir.com; rosario@rhmfir.com; pardis@rhmfir.com; russ@rhmfir.com; david@rhmfir.com; sloan@rhmfir.com; boshra@rhmfir.com; rosario@rhmfir.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **March 15, 2022**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **March 15, 2022**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

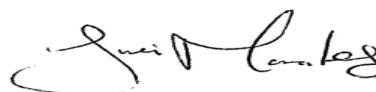
☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 15, 2022 JULIE MORALES

Date

Printed Name



Signature